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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RONNY-MARIE WILSON,)	No.
)	
Plaintiff,)	COMPLAINT ASSERTING DENIAL OF
)	RIGHT OF ACCESS UNDER THE
vs.)	AMERICANS WITH DISABILITIES ACT
)	FOR INJUNCTIVE RELIEF, DAMAGES,
RED ROBIN INTERNATIONAL, INC. dba)	ATTORNEYS' FEES AND COSTS (ADA)
RED ROBIN BURGER AND SPIRITS)	
EMPORIUMS; RMV HOLDINGS, L.P.;)	
)	
Defendants.)	

I. SUMMARY

1. This is a civil rights action by plaintiff RONNY-MARIE WILSON ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Red Robin Gourmet Burgers
3906 Rivermark Plaza
Santa Clara, CA 95054
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against RED ROBIN INTERNATIONAL, INC. dba RED ROBIN BURGER AND SPIRITS EMPORIUMS; and RMV HOLDINGS, L.P. (hereinafter collectively referred to as

1 “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.
2 §§ 12101 et seq.) (“ADA”) and related California statutes.

3 **II. JURISDICTION**

4 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
5 claims.

6 4. Supplemental jurisdiction for claims brought under parallel California law –
7 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

8 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

9 **III. VENUE**

10 6. All actions complained of herein take place within the jurisdiction of the United
11 States District Court, Northern District of California, and venue is invoked pursuant to 28
12 U.S.C. § 1391(b), (c).

13 **IV. PARTIES**

14 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
15 persons), firm, and/or corporation.

16 8. Plaintiff is substantially limited in her ability to walk, must use a wheelchair for
17 mobility, and has substantially limited finger dexterity. Consequently, Plaintiff is “physically
18 disabled,” as defined by all applicable California and United States laws, and a member of the
19 public whose rights are protected by these laws.

20 **V. FACTS**

21 9. The Facility is open to the public, intended for non-residential use, and its
22 operation affects commerce. The Facility is therefore a public accommodation as defined by
23 applicable state and federal laws.

24 10. Plaintiff lives approximately 4 miles from the Facility and visited the Facility on
25 or about May 10, 2016 for the purpose of having dinner. During her visit to the Facility,
26 Plaintiff encountered the following barriers (both physical and intangible) that interfered with,
27 if not outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and
28 accommodations offered at the Facility:

- 1 a) Plaintiff was seated at a table that did not have enough clear space
2 beneath it. It was difficult for Plaintiff to maneuver her wheelchair up to
3 the table, since the table's legs were in the way of her wheelchair.
- 4 b) Plaintiff was not able to locate a path of travel from the dining area to
5 the restroom that was free of obstructions. Plaintiff had to ask her spouse
6 to move chairs out of the way in the bar areas so that she could reach the
7 entrance to the restroom.
- 8 c) Plaintiff was unable to secure the women's restroom designated
9 accessible stall door because of its design. The door had a twist latch,
10 which Plaintiff could not operate due to her reduced dexterity, and no
11 handle on the inside to pull the door closed. Because she could not
12 secure the restroom stall door Plaintiff had to ask her spouse to stand
13 outside the door and hold it closed while she used the toilet, which was
14 embarrassing.
- 15 d) Plaintiff was unable to wash her hands without assistance because the
16 soap dispenser was too high and far back behind the sink for her to be
17 able to reach. Plaintiff required the assistance of her spouse to put some
18 soap from the dispenser into her hand, which was embarrassing.
- 19 e) Plaintiff was not able to use the mirror in the women's restroom because
20 the mirrors were too high for her to be able to see herself in while in her
21 wheelchair. This made her uncomfortable as she was unable to see how
22 she looked.
- 23 f) Plaintiff had trouble exiting the restroom as her approach to the door
24 was blocked by a trash can that was placed near the door. Plaintiff
25 required the assistance of her spouse to open the door so she could leave,
26 which was embarrassing.

27 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
28 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist

1 at the Facility and relate to her disabilities. Plaintiff will seek to amend this Complaint once
2 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
3 exist at the Facility and relate to her disabilities removed to afford her full and equal access.

4 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
5 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
6 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
7 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
8 once the barriers are removed.

9 13. Defendants knew, or should have known, that these elements and areas of the
10 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
11 the physically disabled. Moreover, Defendants have the financial resources to remove these
12 barriers from the Facility (without much difficulty or expense), and make the Facility
13 accessible to the physically disabled. To date, however, Defendants refuse to either remove
14 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

15 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
16 and authority to modify the Facility to remove impediments to wheelchair access and to
17 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
18 Accessible Design. Defendants have not removed such impediments and have not modified the
19 Facility to conform to accessibility standards. Defendants have intentionally maintained the
20 Facility in its current condition and have intentionally refrained from altering the Facility so
21 that it complies with the accessibility standards.

22 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
23 so obvious as to establish Defendants' discriminatory intent. On information and belief,
24 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
25 to relevant building standards; disregard for the building plans and permits issued for the
26 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
27 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
28 property continues to exist in its non-compliant state. Plaintiff further alleges, on information

1 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
2 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

3 **VI. FIRST CLAIM**

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
7 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

8 17. Title III of the ADA holds as a “general rule” that no individual shall be
9 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
10 goods, services, facilities, privileges, and accommodations offered by any person who owns,
11 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

12 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
13 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
14 Facility during each visit and each incident of deterrence.

15 Failure to Remove Architectural Barriers in an Existing Facility

16 19. The ADA specifically prohibits failing to remove architectural barriers, which
17 are structural in nature, in existing facilities where such removal is readily achievable. 42
18 U.S.C. § 12182(b)(2)(A)(iv).

19 20. When an entity can demonstrate that removal of a barrier is not readily
20 achievable, a failure to make goods, services, facilities, or accommodations available through
21 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
22 § 12182(b)(2)(A)(v).

23 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
24 barriers at the Facility without much difficulty or expense, and that Defendants violated the
25 ADA by failing to remove those barriers, when it was readily achievable to do so.

26 22. In the alternative, if it was not “readily achievable” for Defendants to remove
27 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
28 services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 in policies, practices, or procedures at the Facility, when these modifications were necessary to
2 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
3 accommodations.

4 Failure to Maintain Accessible Features

5 31. Defendants additionally violated the ADA by failing to maintain in operable
6 working condition those features of the Facility that are required to be readily accessible to and
7 usable by persons with disabilities.

8 32. Such failure by Defendants to maintain the Facility in an accessible condition
9 was not an isolated or temporary interruption in service or access due to maintenance or
10 repairs.

11 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
12 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

13 **VII. SECOND CLAIM**

14 **Unruh Act**

15 34. Plaintiff re-pleads and incorporates by reference the allegations contained in
16 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17 35. California Civil Code § 51 states, in part, that: All persons within the
18 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
19 facilities, privileges, or services in all business establishments of every kind whatsoever.

20 36. California Civil Code § 51.5 also states, in part that: No business establishment
21 of any kind whatsoever shall discriminate against any person in this state because of the
22 disability of the person.

23 37. California Civil Code § 51(f) specifically incorporates (by reference) an
24 individual's rights under the ADA into the Unruh Act.

25 38. Defendants' aforementioned acts and omissions denied the physically disabled
26 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
27 and services in a business establishment (because of their physical disability).

28 39. These acts and omissions (including the ones that violate the ADA) denied,

1 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

2 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
3 minimum damages of \$4,000 for each offense.

4 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
5 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code
6 § 52(a).

7 **VIII. THIRD CLAIM**

8 **Denial of Full and Equal Access to Public Facilities**

9 42. Plaintiff re-pleads and incorporates by reference the allegations contained in
10 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

11 43. Health and Safety Code § 19955(a) states, in part, that: California public
12 accommodations or facilities (built with private funds) shall adhere to the provisions of
13 Government Code § 4450.

14 44. Health and Safety Code § 19959 states, in part, that: Every existing (non-
15 exempt) public accommodation constructed prior to July 1, 1970, which is altered or
16 structurally repaired, is required to comply with this chapter.

17 45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or
18 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code
19 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

20 46. Defendants' non-compliance with these requirements at the Facility aggrieved
21 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,
22 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

23 **IX. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 25 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 26 2. Statutory minimum damages under section 52(a) of the California Civil Code
27 according to proof.

1 3. Attorneys' fees, litigation expenses, and costs of suit.²

2 4. Interest at the legal rate from the date of the filing of this action.

3 5. For such other and further relief as the Court deems proper.

4 Dated: 2/8/2017

MISSION LAW FIRM, A. P.C.

6 /s/ Zachary M. Best

7 Zachary M. Best

8 Attorney for Plaintiff

Ronny-marie Wilson

28 _____
² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, RONNY-MARIE WILSON, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 2/8/2017

/s/ Ronny-marie Wilson
Ronny-marie Wilson

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Zachary M. Best
Zachary M. Best, Attorney for
Plaintiff, Ronny-marie Wilson